IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7898 of 1998

Date of Decision: 18.3.2004

UNION OF INDIA

Versus

ISHWAR JETHA

(for full cause title, see next sheet)

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for r

1. Special

Mr. Mukesh A. Patel for MR JC SHETH for Petitioner No. 1-4

SUNITA S CHATURVEDI for Respondent No. 1-2,5

RULE SERVED for Respondent No. 3-4,6-25

PER: H.K. RATHOD, J. (ORAL):-

Heard learned advocate Mr. Mukseh A. Patel for the petitioner and learned advocate Mr. P.K. Handa for Ms. Sunita S. Chaturvedi, learned advocate for the respondents.

Whether reporters of Local Papers may be allowed to see the Judgment?

In this petition, the petitioners, Union of India and others have challenged the order passed by the Central Administrative Tribunal, Ahmedabad Bench in Original Application NO. 253 of 1994 dated 11th February, 1998. The Tribunal directed the petitioners to reinstate the respondents in service without back wages on available vacancies but this relief would not affect seniority or engagement of any person who is already in employment at present. The Tribunal also directed the Railway Authority to keep in view length of service amongst the respondents inter se while offering employment against the vacancies arising from time to time. As regards regularization, the Tribunal directed the petitioners to take further action in terms of the Railway Rules and regularize them according to their turn while keeping in view the practice followed by them in such cases. The Tribunal also directed to comply with the directions regarding offering employment against available vacancies as expeditiously as possible and preferably within a period of three months from the date of receipt of copy of the order passed by the Tribunal. Accordingly, the Original Application filed by the respondents was disposed of by the Tribunal. Initially, notice was issued by this court by making it returnable on 15th March, 1999 and ad.interim relief in terms of para 17-B was granted by order dated 24th December, 1998. That ad.interim relief was made to operate till further orders while issuing rule by order dated 26th July, 2000. Affidavit in reply has been filed by the respondents on 13th April, 1999.

Brief facts of the petition are as under:

Present respondents were working as casual labourers under the Railway Administration and their services were terminated by the present petitioners. Therefore, Original Application No. 253 of 1994 was filed by the present respondents before the Central Administrative Tribunal, Ahmedabad Bench. In the application, prayer was made to reinstate them in service with all consequential benefits and to regularize their services by conducting screening unit-wise seniority. It

was not in dispute between the parties that the original applicants were appointed in June and July, 1986 and they continued to work for about two years and some of them worked for about three years. It was also not in dispute between the parties that they had worked for more than 120 days and had acquired temporary status. They were working continuously till July, 1987 and some of them upto September, 1988. The Original Application was filed by the original applicants in the year 1994 challenging the termination of their service. Therefore, there was a delay in filing such an application. The Tribunal has first examined the matter only on the aspect of delay and passed an order on 5th May, 1994 in M.A. No. 183 of 1994. The Tribunal condoned the delay on the basis of the statement made by the learned advocate Mr. Handa on behalf of the applicants that the applicants are prepared to relinquish their claim for back wages upto the date of filing of the Original Application which would remove prejudice, if any, to the respondents in the matter of back wages. Therefore, considering the said statement made by the learned advocate Mr. Handa on behalf of the original applicants, the tribunal allowed the MA No. 183 of 1994 and condoned the delay on a condition that the applicants will not claim and will not be awarded any back wages at least upto the date of filing of the Original Application even if the applicants succeed in their Original Application. Thereafter, the matter was fixed for further hearing and put up for admission. It was the contention raised by the original applicants before the Tribunal that in an identical issue, the tribunal has passed order in Original Application No. 178 of 1994 dated 14th July, 1995 wherein the Tribunal set aside the order of termination of such casual labour on the ground that no notice has been issued prior to the termination of services, as per the Railway Manual. Therefore, ultimately, after hearing the learned advocates for the parties, the Tribunal has passed similar order in terms of the order passed in Original Application NO. 178 of 1994.

Learned advocate Mr.Mukesh A. Patel appearing for the petitioners submits that none of the applicants have acquired temporary status, therefore, no notice is necessary under the Railway Manual. He also submits that the notice is necessary only in case of casual labour who has acquired temporary status after completion of continuous service of 120 days, therefore, according to him, the Tribunal has committed error in deciding the application in favour of the original applicants. He also drew our attention to para 4 and 5 of the petition and submits that the original applicants are not entitled

for the notices as they had not acquired temporary status. He also emphasized that mere working of 120 days is not enough to become eligible for grant of temporary status. He also submits that earlier, there was some scheme framed by the Railways in view of the orders passed by the Supreme Court. He also submits that the original applicants were being engaged by the Railway whenever work was available. He also submits that the applicants were engaged for a specified work for a specified period and none of the applicants had completed 120 days continuous service, therefore, no notice is necessary as per the Railway Manual. Except these submissions, no other submissions were made by the learned advocate Mr. Mukesh A. Patel on behalf of the petitioners.

As against that, learned advocate Mr. Handa submits that the said contention raised by the railway authority has been dealt with by the original applicants in their reply. According to the reply of the applicants, all the applicants had completed more than 120 days continuous service and acquired temporary status as granted by the railway authority with retrospective date in the year 1991 and, therefore, as per the averments made in para 3 of the reply, the railway authority has to follow the procedure prescribed in Rule 1502-IREM Vol.I and 14 days notice is necessary. Mr. Handa submits that these averments made in para 3 of the reply have not been controverted by the railway authority by filing rejoinder before the tribunal. He also submits that the vacancies are available in the railway and he also submits that all the casual labourer with temporary status are required to be regularized. Therefore, according to the submissions made by the learned advocate Mr. Handa, all the applicants have acquired temporary status with retrospective effect in the year 1991, therefore, while terminating their services, as per the Railway Manual, 14 days notice is must and is condition precedent which was not complied with by the Railway Authority. He also submits that in an identical case being Original Application No. 178 of 1994, similar issue was examined by the Central Administrative Tribunal on 14th July, 1994 and the orders were passed by the tribunal which were not challenged by the Railway Authority before the higher forum and the same were accepted and implemented by the Railway Authority in favour of the applicants in Original Application No. 178 of 1994. Therefore, he submits that the tribunal has rightly relied upon the earlier order as referred above and has rightly granted relief in favour of the applicants as prayed for in the original application. He

also submits that the tribunal has not committed any error in passing the order in question and, therefore, there is no necessity to interfere with such orders.

We have considered the submissions made by the learned advocates for the parties. We have also perused the orders passed by the Central Administrative Tribunal, Ahmedabad Bench. We have also perused the order passed by the Central Administrative Tribunal in OA No. 178 of 1994 dated 14th July, 1995. We have considered the averments made in the petition and the reply filed by the respondents.

The question is that at the time of terminating services of the applicants who had acquired temporary status, whether 14 days notice as per the Railway Manual had been given or not. Before the Tribunal, the submissions were made by the learned advocate Mr. Shevde on behalf of the Railway Authority. The submissions made by Mr. Shevde have been referred to in para 5 of the order by the Tribunal. The only contention raised by the Railway Authority before the Tribunal was to the effect that the respondents were being engaged for a specified work for a specified period and they were being engaged subject to availability of work. Except this, no other submissions were made by the Railway Authority before the Tribunal. Learned advocate Mr. Shevde appearing for the present petitioners before the Tribunal had not raised any dispute or denied the contention of Mr. Handa that an identical issue was dealt with and decided by the Tribunal in OA NO. 178 of 1994 and it was not the case of the Railway Authority before the Tribunal that the matter at issue in OA NO. 178 of 1994 was not similar to the case of the original applicants in this case. It was also not the case of the petitioner - Railway Authority that the services of the original applicants were not terminated by the Railway Authority as alleged. No rejoinder has been filed by the Railway Authority against the reply submitted by the applicants. Learned advocate Mr. Mukesh Patel appearing for the petitioners raised various contentions as mentioned in the memo of petition but none of such contentions were raised by the Railway Authority before the Tribunal. The only contention raised by the Railway Authority before the Tribunal was dealt with by the Tribunal. In such circumstances, if the contention raised by the Railway Authority has not been recorded by the Tribunal, then, the Railway Authority can approach the Tribunal by way of review application but no such review application was filed by the Railway Authority before the Tribunal for review of the order in question nor is it the case of the Railway

Authority that the contention, though raised, was not recorded and dealt with by the Tribunal. It may happen that the Railway Authority has raised various contentions in reply submitted to the Tribunal but amongst such various contentions raised by the Railway Authority in its reply, only two contentions were pressed into service and no other contentions were pressed into service during the course of hearing. In such circumstances, the Tribunal is required to consider the submissions or contentions pressed into service and not all the contentions raised in its written statement. This aspect has been examined by the apex court in DAMAN SINGH AND OTHERS VERSUS STATE OF PUNJAB AND OTHERS [AIR 1985 SC 973]. In para 13, the Supreme Court observed as under:

"13. The final submission of Shri Ramamurthi was that several other questions were raised in the writ petition before the High Court but they were not considered. We attach no significance to this submission. It is not unusual for parties and counsel to raise innumerable grounds in the petitions and memoranda of appeal etc. , but , later , confine themselves , in the course of argument to a few only of those grounds , obviously because the rest of the grounds are considered even by them to be untenable. No party or counsel is thereafter entitled to make a grievance that the grounds not argued were not considered. If indeed any ground which was argued was not considered it should be open to the party aggrieved to draw the attention of the court making the order to it by filing a proper application for review or clarification. The time of the superior courts is not to be wasted in inquiring into the question whether , a certain ground to which no reference is found in the judgment of the subordinate court was argued before that court or not ?"

Therefore, so far as the contention of Mr. Patel that the submissions made by the Railway Authority have not been considered by the Tribunal is concerned, then, the remedy is to approach the Tribunal by way of review application. This aspect has been examined by the apex court in STATE OF MAHARASHTRA Vs. RAMDAS SHRINIVAS NAYAK & ANR.[AIR 1982 SC 1249. It was observed by the Supreme Court that the Judge's record is conclusive. It was also held by the Supreme Court that neither lawyer nor litigant may claim to contradict it, except before the Judge himself but nowhere else. The court could not launch into inquiry as to what transpired in the High

Court. Means, if the submissions made and not considered, then, in such circumstances, the only remedy open to the Railway Authority was to approach the Tribunal by way of an application for review because the Court has to go by the judicial record and whatever submissions narrated by the respective parties before the Tribunal has to be looked into. If no submission is there mentioned in the order, this Court cannot look into such submission. The apex court, in the above referred decision, observed as under :

> "Public Policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation".(1) We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence."

In view of the observations made by the Supreme Court in aforesaid two decisions, we are relying upon the order passed by the Tribunal and para 5 of the order that except the said two submissions, no other submissions were made by the Railway Authority before the Tribunal. Similarly, in paragraph 3 of the order, the Tribunal has recorded the undisputed facts between the parties as under:

> "3. It is not in dispute that the applicants were appointed in June and July, 1985 and they continued to work for about 2 years and some of them for about 3 years. It is also not in dispute that they had worked for more than 120 days and had acquired temporary status. They were working continuously till July, 1987 and some of them upto September, 1988. WHen they have filed the O.A. challenging their termination in 1994, the Tribunal by its order dated 5.5.94 had condoned the delay on condition that the applicants will not claim any backwages even if they succeed in the O.A."

The above undisputed facts recorded by the

Tribunal goes to show that the applicants had acquired temporary status after completion of 120 days continuous service. In view of that, it is the duty of the Railway Authority to comply with Rule 1502 of IREM Vol.1 by issuing 14 days notice prior to terminating the services of the applicants who had already acquired the temporary status. Therefore, it was not the case of the Railway Authority before the Tribunal that the applicants had not acquired temporary status. On the contrary, the applicants had acquired temporary status after completion of 120 days continuous service which is an undisputed fact as recorded by the Tribunal. Therefore, the submission which is contrary to such undisputed fact cannot be accepted. Therefore, such contention raised by the learned advocate Mr. Mukesh Patel is rejected. In light of the above observations and according to our opinion, the Tribunal was right in examining the matter and passing the order considering the order passed earlier in OA NO. 178 of 1994 dated 14th July,1995 being an identical matter. In such circumstances, when 14 days notices were not given to the original applicants prior to termination of their services, the order of termination of their services were bad in view of the non compliance of Rule 1502 of IREM Vol.1 and therefore, were rightly set aside by the Tribunal. In doing so, no error apparent on the face of the record has been committed by the Tribunal requiring interference of this Court. Therefore, there is no substance in this petition and the same is required to be dismissed.

Accordingly, this petition is dismissed. Rule is discharged. Interim relief granted earlier shall stand vacated with no order as to costs.

Learned advocate Mr. Handa appearing for the respondents submits that though the order was passed by the tribunal on 11th February, 1998, in view of the interim order made by this Court on 24th December, 1998, the directions issued by the Tribunal have not been complied with by the Railway Authority. He submits that all the original applicants are out of job, facing starvation and, therefore, some suitable directions may be issued to the Railway Authority to implement and execute the order made by the Tribunal dated 11th February, 1998 with effect from 11th February, 1998 and to grant all the benefits available to the respondents as per the orders of the tribunal with effect from 11th February, 1998.

We have considered the submissions made by the learned advocates for the parties on this issue.

Considering the hard reality that since 1998, stay has operated against the order of the Tribunal and, therefore, the applicants have remained out of job and facing starvation, in such facts of the case, petitioners - Railway Authority is directed to implement the order dated 11th February, 1998 passed by the Tribunal in OA No. 253 of 1994 with effect from 11th February, 1998 and to grant them all benefits flowing from the order of the Tribunal with effect from 11th February, 1998 and to pay whatever benefits available to the original applicants and accruing in their favour because of the order passed by the Tribunal dated 11th February, 1998, including their reinstatement, within one month from the date of receipt of copy of this order, as if the order of the Tribunal was implemented from 11th February, 1998.

[BHAWANI SINGH]
CHIEF JUSTICE

[H.K.RATHOD]
JUDGE

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